

Report from the
**Committee on
Civil Rights**

TO THE
PRESIDENTIAL
TASK FORCE
ON EMPLOYMENT
OF ADULTS WITH
DISABILITIES

Chair:

Ida L. Castro, Chairwoman
Equal Employment Opportunities Commission



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

Office of
the Chairwoman

The Honorable Alexis Herman
Chairwoman, Presidential Task Force on
Employment of Adults with Disabilities

The Honorable Tony Coelho
Vice-Chair, Presidential Task Force on
Employment of Adults with Disabilities
200 Constitution Avenue, N.W., Room S-2312
Washington, D.C. 20210

Dear Chairwoman Herman & Vice-Chair Coelho:

On behalf of the Civil Rights Committee of the Presidential Task Force on Employment of Adults with Disabilities, I am honored to forward to you the PTFEAD Civil Rights Committee Report. This report is a result of dedicated Committee members from multiple agencies working together to bring well-researched and thoroughly thought out ideas to fruition.

The past six months has provided me with the gratifying opportunity to lead a group that is organized, focused and dedicated to the overall mission of eliminating barriers to employment of under-served groups with disabilities. The members are totally committed to reaching out, educating and assisting under-served communities, including racial and ethnic minorities, about the Americans with Disabilities Act, the Rehabilitation Act, and other laws which impact adults with disabilities.

I am pleased to report that the recommendations contained in the work of this Committee, promote the stated purpose of the Task Force "to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment". I am grateful to the Task Force for all of the support and guidance that you have provided to the Committee, and I look forward to continuing this vital work in the coming months.

Sincerely,

A handwritten signature in black ink, appearing to read "Ida L. Castro", is written over a horizontal line.

Ida L. Castro
Chairwoman
Civil Rights Committee

Executive Summary

Adults with disabilities remain one of the largest groups of unemployed individuals in the nation. While many of these individuals are able and willing to work, the doors to employment and economic prosperity have been closed to them because of attitudes and beliefs based on fears, myths, and stereotypes. To counter this growing problem, President Clinton established the Presidential Task Force on Employment of Adults with Disabilities. The stated purpose of the Task Force is “to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment.” Given this purpose, the Committee on Civil Rights focused its energies on examining salient disability rights issues and developing creative strategies for ensuring full participation in the workforce by adults with disabilities.

As Chair of the Committee on Civil Rights, Ida L. Castro formed five subcommittees and outlined broad objectives for each of them. The subcommittees met regularly and began developing (and completing) various projects, initiatives, and activities. This report summarizes the Committee’s work thus far, and includes short-term and long-term goals and recommendations for future action. The following is a brief summary of the five subcommittees’ objectives and highlights from their efforts.

First, the Coordinated Enforcement Subcommittee was charged with developing a coordinated approach for improving enforcement of the Adults with Disabilities Act (ADA), the Rehabilitation Act, and other civil rights laws which impact adults with disabilities. Among other things, this Subcommittee developed an initiative whereby the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Department of Labor (DOL) would coordinate to identify and eradicate hiring discrimination against individuals with disabilities. The Subcommittee’s focus on hiring barriers — which are often difficult to detect and combat — is particularly important given the Task Force’s goal of enabling more individuals with disabilities to enter the nation’s workforce.

Second, the Project IMPACT Subcommittee focused its efforts on designing and implementing a comprehensive, interagency project aimed at increasing the employability and economic empowerment of underserved groups, especially racial and ethnic minorities, in the disability community. As part of this project, the Subcommittee developed a pilot program tailored to the greater Baltimore area. To make an “impact,” the Subcommittee will launch a major outreach and technical assistance campaign early next year to make minorities with disabilities aware of their civil rights, and to remind the Federal community of its responsibilities under relevant disability rights statutes. The Subcommittee is working with local agency representatives and community-based organizations to ensure the pilot program’s effectiveness.

In addition, the Project IMPACT Subcommittee drafted proposed contract and/or grant language to be used by Federal agencies to ensure that all individuals, including racial and ethnic minorities with disabilities, have full access to programs that enjoy Federal funds. Since the criteria for contract and grant competitions are focused on the purposes of each particular program, the Subcommittee recommends that Federal agencies adapt the language provided to the specialized requirements of their programs.

Third, the Technology Accessibility Subcommittee was asked to coordinate an effort to promote technology accessibility in the Federal government and the private sector. This Subcommittee examined a plethora of accessibility issues relating to Section 508 compliance, training and technical assistance, and public programs and services. Based on its research, the Subcommittee has recommended that the President issue a comprehensive Executive Order to ensure that technology accessibility is a priority issue for all agencies in the Federal government. Members of the Subcommittee will work with the Task Force to begin drafting specific language for the Executive Order.

Fourth, the Department of Transportation (DOT) Employment Policy Review Subcommittee was charged with reviewing certain DOT regulations regarding interstate commercial road transportation and make recommendations for modifications

which permit access by employees and applicants with disabilities. Specifically, this Subcommittee reviewed DOT's blanket prohibition on the employment of any individual who has diabetes requiring the use of insulin for treatment in the position of an operator of a commercial motor vehicle in interstate commerce. After completing its evaluation, the Subcommittee will make a recommendation intended to promote the individualized assessment of a person's disability while ensuring the appropriate level of safety required under the law.

Fifth and last, the Subcommittee on Disability Benefits and the ADA was asked to review and make recommendations to modify disability benefit forms used by the Social Security Administration (SSA). We are pleased to report that SSA already has revised several forms on which applicants for benefits are required to provide information about their disability and inability to work. The changes also include a plain English explanation of the SSA's definition of disability. The SSA will continue to make similar changes to other forms, including the application forms for SSDI and Supplemental Security Income (SSI), by January 2000.

Each of the subcommittees of the Committee on Civil Rights satisfied their objectives, and summaries of their activities and recommendations are included in the Committee's Report. We will continue to implement many of the identified projects, as well as to develop new initiatives and strategies for ensuring that adults with disabilities secure and maintain employment in the nation's workforce. Indeed, the work of this Committee, and the Task Force, *must* continue until we are confident that we have fulfilled the noble promise of equal opportunity for all individuals under the law.

Mission Statement of The Committee

- Develop a coordinated approach among the relevant enforcement agencies for improving the enforcement of the Americans with Disabilities Act and the Rehabilitation Act.

- Study and recommend ways to educate and assist under-served communities, including racial and ethnic minorities, about the Americans with Disabilities Act, the Rehabilitation Act, and other laws that impact adults with disabilities.
- Promote technology accessibility as part of civil rights enforcement and implementation efforts in the Federal government and the private sector.
- Review U.S. Department of Transportation regulations which are barriers to the employment of individuals with specified disabilities, and which are inconsistent with the Americans with Disabilities Act.
- Help to resolve the confusion and misconceptions surrounding several disability benefit forms currently used by the Social Security Administration.
- Track and report on implementation of recommendations approved by the Task Force.

Activities

The Committee on Civil Rights held its first meeting on April 20, 1999. At this inaugural meeting, Chairwoman Castro formed five subcommittees and outlined the tasks for each of them.

1. ***Coordinated Enforcement:*** Develop a coordinated approach for improving enforcement of the ADA, the Rehabilitation Act, and other laws that impact adults with disabilities.
2. ***Project IMPACT:*** Design and implement a comprehensive, interagency project to increase the employability and economic empowerment of under-served groups, especially racial and ethnic minorities, in the disability community.
3. ***Technology Accessibility:*** Coordinate an effort to promote technology accessibility in the Federal government and the private sector.
4. ***DOT Employment Policy Review:*** Review DOT's regulations regarding inter-

state commercial road transportation and make recommendations for modifications which permit access by employees/applicants with disabilities.

5. ***Disability Benefits and the ADA:*** Review and make recommendations to modify disability benefit forms used by SSA.

On June 15, 1999, each subcommittee reported on its work and submitted an interim report to the Committee on Civil Rights. A summary of the subcommittees' activities, including short-term and long-term goals and recommendations for future action, are listed below. The Committee on Civil Rights fully endorses and supports all of its subcommittees' proposals and recommendations.

Coordinated Enforcement Subcommittee

Mission and Goals of the Subcommittee

The Subcommittee was charged with developing actions, recommendations, and directives that will enhance a coordinated approach among EEOC, DOJ, and DOL's Office of Federal Contract and Compliance Programs (OFCCP) to improve the enforcement of the ADA, the Rehabilitation Act, and other laws that impact working-age adults with disabilities.

Description of Specific Projects

Short-Term (Less than 18 Months)

Coordinated Enforcement Priorities and Initiatives

The first short-term project undertaken by the Subcommittee was to identify areas of disability dis-

crimination that would particularly benefit from a coordinated enforcement approach by EEOC, DOJ, and DOL, and maximize the utilization of the resources of those Federal agencies.

Previous Coordination

EEOC, DOJ, and DOL already have practical experience in coordinating enforcement of the ADA and the Rehabilitation Act. These agencies have worked together to develop regulations and guidance implementing the laws, to investigate complaints at the administrative level, and to bring administrative actions and litigation to enforce these laws.

First, pursuant to congressional mandate in the ADA, the three agencies have joint regulations in place to enable them to efficiently coordinate the investigations of employment discrimination complaints under the ADA and Sections 503 and 504 of the Rehabilitation Act. Second, the agencies have worked together in the litigation of disability cases. For example, EEOC, DOJ, and SSA developed a joint position on the critical issue of whether an individual who sought and/or received disability benefits is thereby precluded from asserting that he is a qualified individual within the meaning of the ADA.¹ The Supreme Court unanimously agreed with the views put forth by the government, and held that pursuit and/or receipt of social security benefits does not automatically stop a recipient from pursuing an ADA claim or create a strong presumption against the recipient's ADA success. Another instance of coordinated enforcement activity arose out of a charge filed with EEOC by an individual who had been denied reinstatement into his school bus driver position following amputation of his left leg below the knee. The bus company based its decision on a New York State Department of Motor Vehicles regulation implementing the New York Vehicle and Traffic Law. EEOC notified DOJ of the regulation, leading DOJ to file an ADA action against the public entities involved — two state agencies and a school district — while EEOC sued the bus company, a private employer. EEOC obtained a favorable decision

¹The government's joint position — that there is no preclusive effect because the definition of "disability" is different under different statutory schemes — was articulated through the filing of *amicus* briefs in a number of courts of appeals and finally in the Supreme Court, where the Solicitor General filed a brief representing the views of EEOC, DOJ, and SSA in *Cleveland v. Policy Management Systems Corp.*

on liability and settled its relief claim. DOJ's action is still pending; however, the state rescinded the Department of Motor Vehicles regulation shortly after DOJ filed its suit.

Current Initiatives

The Subcommittee identified two coordinated enforcement initiatives, and is working to identify additional initiatives based on the following information: (1) data collected by EEOC, DOJ, and DOL regarding their disability discrimination charges/complaints and litigation dockets; (2) information regarding each agency's enforcement authority, operations, enforcement mechanisms for exercising its authority, and interagency coordination rules and Memoranda of Understandings (MOUs); (3) each agency's current enforcement priorities as reflected by strategic enforcement plans or priority lists; and (4) input from a number of disability organizations and advocates, state civil rights commissions and other governmental organizations, councils, and institutes with expertise in employment related disability issues.

ADA/Rehabilitation Act Issues Involving Hiring/Qualification Discrimination

The Subcommittee has identified hiring discrimination as an issue that would benefit from coordinated enforcement. Approximately 76 percent of people with disabilities are unemployed, while approximately 79 percent report that they would like to have a job.² The very high unemployment rate among working age people with disabilities suggests that significant hiring barriers, including discrimination, may exist. Yet, EEOC's charge receipt records indicate that only approximately 11 percent of the Commission's disability discrimination charges allege hiring discrimination. Consequently, the Subcommittee recommends that agencies make a concerted multi-agency effort to investigate and eliminate discrimination in hiring people with disabilities. We anticipate that a coordinated enforcement effort in this area will enable more individuals with disabilities to enter the workforce.

The Subcommittee is developing a hiring initiative to recommend to EEOC, DOJ, and DOL to combat unnecessary qualification standards in state and local laws, ordinances, regulations, and professional certification requirements that bar individuals with disabilities from employment in violation of the ADA. This initiative will initially focus on two areas:

- *Teacher certification requirements.* We identified several state teacher certification requirements that appear to bar individuals with mental or physical impairments.
- *Requirements that apply across the board to all state employees.* We identified one state provision that prohibits any individual who has been diagnosed with a mental condition listed under "DSM IV" from holding law enforcement or law enforcement-related jobs.

EEOC and DOJ are continuing to review state general hiring requirements and state teacher certification requirements to identify those that may violate the ADA. The project will use the identification of these disqualifying qualification standards to educate state and local governing bodies about their current laws and ordinances that must be brought into line with the requirements of the ADA and the Rehabilitation Act. When voluntary compliance is not achieved, the Subcommittee recommends that EEOC, DOJ, and DOL develop a coordinated enforcement approach to challenge such laws.

- EEOC, as the agency enforcing Title I of the ADA, will be able to identify strong employment discrimination claims at the early stages of investigation, where they can be developed for purposes of this coordinated enforcement initiative. Then, if conciliation fails, EEOC can forward cases involving discriminatory hiring qualification standards to DOJ for enforcement through the courts. EEOC also can initiate "Commissioner charges" to investigate alleged discriminatory hiring practices that come to the agency's attention outside the regular charge filing process.

²LaPlante, M.P., Kennedy, J. Kaye, S.H. Wener, B.L., *Disability and Employment: Disability Statistics Abstract*, Disability Statistics Rehabilitation Research and Training Center, University of California, San Francisco, CA., 1997.

- DOJ, under Title II of the ADA, can bring enforcement actions against those state and local governments that utilize hiring qualification standards that discriminate on the basis of disability. In addition, as the agency coordinating government-wide enforcement of Section 504 of the Rehabilitation Act, DOJ can provide its expertise on Section 504 employment discrimination complaints brought against Federal grantees, which include public school systems.
- DOL, which enforces the nondiscrimination and affirmative action obligations of Section 503 of the Rehabilitation Act applicable to Federal government contractors and subcontractors, is in a position to identify promising Section 503 complaints and to use its compliance review authority, as appropriate, to identify qualification standards contained in state laws that pose hiring barriers for people with disabilities.

Interagency Coordination Working Group

For several years following the passage of the ADA, EEOC, DOJ, DOL, and other agencies with significant responsibility for enforcing and/or investigating complaints under the ADA and the Rehabilitation Act met on a monthly basis to discuss emerging legal issues and to develop policy positions. While it does not appear necessary that agencies continue to meet on as frequent a basis concerning ADA enforcement and policy issues, it is useful for agencies with significant ADA or Rehabilitation Act functions to meet periodically to share information about how they are carrying out their responsibilities and about particularly significant developments in the law. This type of coordination will enable participating agencies to make informed decisions about investigation, enforcement, and implementation strategies and will help to ensure that government agencies are “speaking with one voice” on issues affecting individuals with disabilities.

To this end, representatives from a number of Federal agencies, including EEOC, DOJ, DOL, the Department of Education (ED), the Federal Communications Commission (FCC), and the Department of Health and Human Services (HHS), will meet twice

during the next year. The first of these meetings will focus on the implications of recent Supreme Court decisions interpreting the ADA. A second meeting will occur in early 2000. Following the second meeting, the Subcommittee will determine whether additional similar meetings would be a valuable way of furthering coordinated enforcement of the ADA. Future meetings might focus on topics such as any new EEOC enforcement guidance that may be issued and particularly significant judicial decisions interpreting the ADA.

Coordinated Utilization of Agency Training

The Subcommittee has surveyed and catalogued Federal agency training materials used to train investigators and attorneys on disability discrimination laws and is exploring ways to better use staff training to further the goals of the ADA. As a first step, the Subcommittee surveyed the training materials that already have been developed in-house by various enforcement agencies. Many of these materials would be useful to enforcement officials in other agencies. EEOC, in particular, has developed a significant amount of relevant material, such as comprehensive training designed to provide new attorneys and investigators with an overview of ADA requirements, as well as in-depth training on key concepts such as “reasonable accommodation.” The training materials already developed by agencies will be made available to enforcement agencies throughout the government.

The Subcommittee also is exploring the development of new training materials that would complement coordinated initiatives, such as training for agency attorneys and investigators regarding handling disability discrimination experienced by racial and language minorities with disabilities. These materials could be made available to those agencies likely to encounter instances of disability discrimination affecting such populations.

Long-Term (More than 18 Months)

1. If implemented, EEOC, DOJ, and DOL will complete the hiring initiative aimed at eliminating state and local requirements that may violate the ADA and/or the Rehabilitation Act.

2. The Subcommittee will evaluate and make recommendations regarding additional coordinated enforcement initiatives relating to other hiring barrier issues.
3. The Subcommittee will evaluate and make recommendations regarding coordinated enforcement initiatives relating to disability discrimination suffered by language and racial minorities. There are several consequences that arise from this population's employment in the workforce. Like other workers, they experience disabling injuries for which they may require reasonable accommodation. However, as a result of language and cultural barriers, these groups are less aware of, and less likely to assert, their rights. As a result, they are unlikely to request accommodation or to challenge decisions to terminate their employment based upon their disabilities. The Subcommittee believes that an enhanced awareness of these issues on the part of agency investigators will serve to reveal more violations suffered by language and racial minorities. To achieve this end, the Subcommittee recommends exploring the possibility of coordinated training or guidance to investigators on disability discrimination suffered by these workers. In addition, we will explore the development of an enforcement initiative targeting hazardous industries that employ a high percentage of language and racial minorities. Finally, the Subcommittee will continue to meet with the Project IMPACT Subcommittee to discuss targeted outreach on disability rights to this specific population.
4. The Subcommittee will evaluate and make further recommendations regarding coordination mechanisms, such as coordination working groups and MOUs, that could be undertaken to improve enforcement.

Recommendations for Further Review and Action

1. The Subcommittee recommends that EEOC, DOJ, DOL, and FCC continue to make current ADA and Rehabilitation Act related information available on their web sites.

2. The Subcommittee recommends that the President and Congress provide Federal financial support to EEOC, DOJ, DOL, and FCC to develop compatible data collection systems for disability discrimination charges, investigations, and litigation to allow for greater ease in information sharing and analysis of Federal agency enforcement activity.

Project Impact Subcommittee

Mission and Goals of the Subcommittee

The Subcommittee was charged with developing a coordinated and comprehensive interagency effort aimed at increasing the employability and economic empowerment of under-served groups, especially racial and ethnic minorities, within the disability community. Through targeted outreach and technical assistance, we hope to educate these individuals about their civil rights in the work place.

Project IMPACT has developed three primary initiatives aimed at addressing the unique needs of minorities with disabilities. First and most ambitious, the Subcommittee intends to coordinate a comprehensive pilot program in the Baltimore area to educate racial and ethnic minorities with disabilities about their civil rights relating to employment. Second, Project IMPACT seeks to increase education and outreach efforts by PTFEAD members and high-level administration officials by providing them with "talking points" regarding the intersection of disability and minority status. Third and last, the Subcommittee recommends proposed contract/grant language recognizing the importance of the civil rights of minorities with disabilities for inclusion in all requests for contract bids and grant proposals solicited by Federal agencies regarding employment, housing, healthcare, transportation, and education.

Description of Specific Projects

Short-Term (Less than 18 Months)

Baltimore Pilot Program

Racial and ethnic groups often form an under-represented minority within the disability community. These groups are usually geographically isolated — and often linguistically separated — from not only the disability community, but from society generally. Through a targeted pilot program, Project IMPACT hopes to accomplish three goals:

- To provide minorities in the disability community with the requisite knowledge to understand the legal protections provided by Federal civil rights laws, and with the necessary information to access the enforcement infrastructure when they experience discrimination.
- To furnish minorities in the disability community with service information regarding all aspects of securing gainful employment, including obtaining access to adult education, job training, affordable housing, effective transportation, and adequate healthcare.
- To educate the Federal community about the unique needs of minorities with disabilities and the obligation to protect their civil rights.

By fostering partnerships between Federal agencies, Federally-funded service providers, and community-based organizations, Project IMPACT will pilot a “Know Your Rights” campaign aimed at making minorities with disabilities aware of their civil rights, and reminding the Federal community of its responsibilities under relevant disability rights statutes. We anticipate that agencies such as DOJ, DOL, DOT, ED, EEOC, FCC, the Department of Housing and Urban Development (HUD), and the Small Business Administration (SBA) will play active roles in this concerted effort. In addition, the pilot program will provide service information to minorities with disabilities in an effort to bridge the gap between protecting the fundamental civil rights of individuals and accessing basic human services necessary to obtain employment. By working with local agency representatives and community-based

organizations to develop the service information component of the pilot program, we hope to increase the program’s usefulness and effectiveness.

The Subcommittee held an exploratory meeting in Baltimore on July 15, 1999 with representatives from seven Federal agencies with offices and/or programs in the Baltimore area. We ascertained the extent to which individuals with disabilities, especially racial and ethnic minorities, benefit from existing One-Stop Centers and/or initiatives, and discussed the viability and usefulness of the proposed pilot program in the Baltimore area. All participants agreed that the pilot program would serve to better assist the racial and ethnic minorities in the disability community. Additional meetings with community-based organizations and Federally-funded organizations are planned for November 1999. The Subcommittee expects to launch the targeted outreach and technical assistance campaign by January 2000.

Education and Outreach Initiatives

Talking Points — Intersection of Disability and Minority Status

The Subcommittee has drafted “talking points” regarding the intersection of disability and minority status. The talking points serve three purposes: (1) to describe the reasons why racial and ethnic minorities on average have a high rate of disability; (2) to increase awareness about the unique needs of minorities with disabilities; and (3) to provide some examples of how agencies and organizations can meet those needs. The Subcommittee recommends that PTFEAD members and other high-level officials in the Administration commit to using the talking points in speeches and articles in mainstream and targeted media. The talking points may be found in Attachment A.

Federal Agency Translation Checklist

As a second education and outreach initiative, the Subcommittee intends to review the service information provided by agencies to determine whether such information should be updated, simplified, and placed in culturally sensitive formats. Moreover, the Subcommittee will prepare a “How To” checklist for agencies interested in translating their information

into other languages. By providing understandable current information in foreign languages about their services, Federal agencies can provide information and assistance to a greater number of individuals with disabilities who are non-English speakers.

Contract/Grant Language and Minorities with Disabilities

Many Federal agencies enter into contracts with companies and/or provide grants to organizations that provide services to communities throughout the country. As recipients of Federal funds, these companies and organizations are required to comply with Federal civil rights laws governing Federal fund recipients, including the Rehabilitation Act, Title VI, and Title IX. In addition, other laws, including the ADA and Title VII, also may have applicable requirements. Often, violations of these statutes are addressed as after-the-fact enforcement issues. Project IMPACT seeks to change this approach. Instead, the Subcommittee is taking a proactive stance toward ensuring that all individuals, including minorities with disabilities, have full access to programs that enjoy Federal funds. To this end, we have drafted proposed contract/grant language to encourage potential grantees and contractors to institute program mechanisms that anticipate and avoid discrimination, as well as promote equal access to the program's benefits.

Provided below is generalized language developed by Project IMPACT to be used in Federal contract and grant applications. Since the criteria for grant and contract competitions are focused on the purposes of each particular program, the Subcommittee recommends that Federal agencies adapt the language provided below to the specialized requirements of their programs.

"Describe how your program will ensure that individuals, including racial and ethnic minorities, in the disability community will have full and fair access to your program; and how you will ensure full compliance with Federal civil rights and nondiscrimination requirements, including Executive Order 11246, Section 504 of the Rehabilitation Act and, if applicable, the ADA."

Agencies with authority to include such criteria should adapt the recommended language as part of the competitions used to select providers of Federally funded service programs. For those agencies that award contracts and/or grants using a percentage point system, the Subcommittee suggests that agencies dedicate no less than 10 percent of the total available points to the specific "factor" of ensuring nondiscrimination, as well as program access by all groups, including racial and ethnic minorities with disabilities. This means taking proactive steps to eliminate artificial barriers to program participation and to enhance awareness of the program by these groups. To ensure that this "factor" is given appropriate consideration, the Subcommittee suggests that agencies involve their civil rights and/or EEO offices in the selection process. Finally, Federal agencies that do not currently have authority to do so should take steps toward obtaining the regulatory or legislative authority needed to consider an applicant's commitment to fairly serve individuals, especially racial and ethnic minorities, in the disability community as part of the selection process.

Long-Term (More than 18 Months)

Baltimore Pilot Program

Project IMPACT will continue to develop and implement the Baltimore pilot program. If the pilot program is launched by January 2000, we expect to have initial results by July 2000. The Subcommittee also will increase our collaboration with other PTFEAD committees, and recommend that linkages be created between the web sites of Federal agencies and the web sites of community-based organizations. Once we have completed the Baltimore pilot program, we hope to coordinate other pilot programs in other parts of the country. Our ultimate goal is to make the Project IMPACT pilot the model program targeted to minorities with disabilities.

NCD Conference on Minorities with Disabilities

Project IMPACT will recommend civil rights issues for discussion at the *National Council on Disability's Think Tank on Minorities with Disabilities* to be held in the Spring of 2000.

Recommendations for Further Review and Action

1. The Subcommittee recommends that the President issue a directive requiring that Federal agencies, to the extent possible, fund outreach initiatives aimed at minorities with disabilities, their families, and pertinent community-based organizations.
2. The Subcommittee recommends that the President and Congress provide Federal financial support to Federal agencies to update and simplify their current service information for individuals with disabilities, and to provide such information in multiple languages based on community needs.
3. The Subcommittee recommends that the President and Congress provide Federal financial support and assistance to tribal governments seeking to enhance services to tribe members with disabilities (e.g., creating a Native American disability technical assistance center that would develop and deliver culturally appropriate technical assistance and training to interested tribal governments regarding U.S. disability laws and policies with the goal of improving services to and outcomes for people with disabilities living in Indian areas).

Technology Accessibility Subcommittee

Mission and Goals of the Subcommittee

The Technology Accessibility Subcommittee was charged with coordinating an effort to promote technology accessibility in the Federal government

and the private sector. The Subcommittee identified four primary areas on which to focus its efforts:

1. *Section 508 Coordination:* Work with DOJ to implement Section 508 of the Rehabilitation Act, which requires agencies to make all new technology acquisitions accessible to people with disabilities; publicize Section 508 and use it as a vehicle to inform agencies about technology access, to promote interim standards, and to encourage linkages between reasonable accommodation and system accessibility efforts.
2. *Training and Technical Assistance:* Promote training and technical assistance on technology access issues at Federal agencies; identify technical assistance needs and recommend ways to meet them; identify gaps or needs not served by current technology access programs; ensure accessibility at technology-based training programs for Federal employees and members of the public.
3. *Public Programs and Services:* Identify broad classes of Federal programs and services delivered to the public via technology and recommend how to make those services and programs accessible (e.g., web sites, job services, etc.)
4. *Technology in Civil Rights Enforcement:* Recommend ways that agencies can place greater emphasis on technology access in their enforcement efforts for disability-related laws.

Description of Specific Projects

The Subcommittee determined that Federal information technology accessibility and implementation efforts should be concentrated on programs previously identified by OMB as “high impact” programs for Y2K compliance. Generally, these programs have service delivery components which depend heavily on technology, and provide the most critical or essential of the Federal government’s services to the public.

The Federal government’s efforts to promote technology access affect the private sector by creating market pressure, giving technology companies an

incentive to make their mainstream products accessible to people with disabilities. When Federal agencies consistently ask for accessible products, companies that include these features in their products will have a competitive advantage over those that have not. Ultimately, this will increase the accessibility of common productivity and educational software and hardware, and will boost employment and employability for people with disabilities in all sectors of the economy. However, the market pressure exists only if all Federal agencies understand their obligations under Section 508 of the Rehabilitation Act and make accessibility a factor in their technology purchasing decisions.

The Subcommittee has therefore concentrated its recommendations on educating Federal agency staff on technology access and the link between procurement/contracting activities and Section 508 compliance. The Subcommittee has identified the following short-term and long-term items that would make information technology accessible to people with disabilities, and that would help Federal agencies and organizations become fully compliant with Section 508.

Short-Term (Less than 18 Months)

Section 508 Coordination

Most, if not all, Federal agencies have utilized specialized Y2K staff to coordinate numerous programs and projects to test and modify agency software to comply with Y2K standards. Some of the same skills used by the Y2K staff will be required to successfully implement the Section 508 standards. Accordingly, the Subcommittee recommends that Federal agencies strongly consider using their Y2K staff for Section 508 compliance after January 2000. Agencies will likely also need staff who are familiar with technology access (making systems accessible) and assistive technology (using specialized devices for individuals with disabilities) to provide technical guidance and evaluation.

In addition, many Federal agencies are (or will be) required to have a Chief Information Officer (CIO). The Subcommittee recommends that this Officer establish a technology access program within the information office specifically to address electronic

and information technology access issues and standards. Agencies in which technology acquisition decisions are made in an office other than the CIO organization should consider establishing a technology access program in that office as well. Such programs will serve to ensure that each agency is fully compliant with Section 508 of the Rehabilitation Act.

In addition to the technology accessibility provisions in Section 508, the Rehabilitation Act requires that Federal employers provide reasonable accommodations to qualified individuals with disabilities. Both of these efforts may be best pursued in tandem. Accordingly, the Subcommittee recommends that Federal agency assistive technology programs be developed in such a manner as to ensure that all employees with disabilities receive appropriate technology-related accommodations, including needs assessments, integration of assistive technology with mainstream systems, and prompt service and maintenance.

Training and Technical Assistance

Promote training and technical assistance on technology access issues at Federal agencies

Section 508 of the Rehabilitation Act directs the Access Board and General Services Administration (GSA) to provide technical assistance to other agencies implementing the technology access requirements. The Subcommittee recommends that the President and Congress establish ongoing funding for the technical assistance function in these agencies and direct them to draw upon the experience of other agencies that have already implemented technology access requirements, such as the Department of Education, the National Science Foundation, and the Census Bureau. The Subcommittee further recommends that GSA develop a comprehensive plan for providing technical assistance and guidance on Section 508, in cooperation with the Department of Justice (which collects agency self-evaluations) and the Department of Education (which developed the first Federal software accessibility requirements together with policy and contract language to implement them).

The Subcommittee recommends that all contracting/procurement training and certification programs within Federal agencies, and those whose curriculum is determined by the Federal Acquisition Regulations (FAR) Council, incorporate Section 508 and technology access concepts into their curricula. The USDA Graduate School and other Federal contracting/procurement training programs also should include technology access. Finally, the Federal Acquisition Institute and the Defense Acquisition University should include information on technology access in their courses, including information on how to apply the Section 508 technology accessibility standards in the FAR.

The Subcommittee also recommends that end user support functions in Federal agencies, (e.g., computer help desks and installation and support functions), incorporate expertise with technology access and assistive technology, and provide specialized services adequate to ensure that end users with disabilities receive all needed training and support to fully utilize electronic and information technology, including assistive or specialized technology. This may include, but is not limited to support services for use of computers, software, hardware, web sites, e-mail, e-commerce, and telephone systems.

Ensure accessibility at technology-based training programs for Federal employees

There are many training programs and courses offered to Federal employees. The Subcommittee recognizes that the Rehabilitation Act requires all Federal agency training programs which use technology, e.g., distance learning and web-based tutorials, be designed and delivered in a manner accessible to people with disabilities. The Subcommittee recommends that agencies examine their training programs to ensure that this is the case.

In addition, the President's Task Force on Federal Training Technology is examining technology-related training for Federal employees and is considering establishing Individual Training Accounts for Federal employees. If such accounts are established, the Subcommittee recommends that the accounts include accommodation provisions for interpreters, readers, and auxiliary aids and services required by employees with disabilities, and that

the cost for such accommodations come from a centralized fund to avoid potentially prohibitive stress on local budgets.

Public Programs and Services

The Subcommittee recognizes that the Rehabilitation Act generally requires that all Federal agency web sites be fully accessible to people with disabilities, and comply with Section 508 standards. The Subcommittee recommends that agencies that use Portable Document Format (PDF) files on their web sites to provide documents to the public also should provide accessible text versions of these documents as they are not accessible to blind individuals using screen readers. The current version of the Adobe Acrobat conversion utility does not accurately convert text to an appropriate accessible format, and no conversion utility is capable of making graphic elements accessible.

Federal agencies that solicit and/or receive public comment over the internet or via their web sites must ensure that these means of interacting with the public are fully accessible to people with disabilities. The subcommittee recommends that agencies use an accessibility utility, (e.g., Bobby or GSA-CITA's accessibility utility), to check their web sites and correct any access problems.

Federal agencies that use computer kiosks or similar means of sharing information with the public must ensure that the kiosks and the information contained within them are accessible to individuals with disabilities. The Subcommittee recommends that agencies use the information on accessible kiosks developed by the Trace Center at the University of Wisconsin in Madison to check their kiosks and correct any access problems.

Technology in Civil Rights Enforcement

To ensure compliance with civil rights enforcement efforts related to technology, the Subcommittee believes that Federal agencies and their grantees need specific guidance on technology access issues. Accordingly, the Subcommittee recommends that DOJ and/or OMB prepare and distribute correspondence to all Federal agencies (and grantees) instructing them on their existing

obligations under Section 504, and reminding them that Section 508 is effective even before the Access Board releases its standards for electronic and information technology accessibility.

Long-Term (More than 18 Months)

Accessibility of Communications Technologies

The Subcommittee notes increasing use of sophisticated electronic communications technologies in the workplace. To increase employment rates for people with disabilities and to ensure that Federal employees with disabilities are not disadvantaged, the Subcommittee recommends that Federal agencies strengthen, to the extent possible, electronic communications in the workplace by implementing the following:

- Extend current rights to access telecommunications to advanced and other information services, such as voice mail, voice information services, and equipment used to deliver such services;
- Reserve a channel for video description within digital programming and a bandwidth for closed captioning options;
- Provide greater accessibility of closed captioning and video description in new programming, and develop a five year phase-in period to require full video programming accessibility in closed captioning and video description of programming existing before the Telecommunications Act of 1996 took effect;
- Require that equipment capable of receiving television signals be accessible to and usable by persons with disabilities; and
- Dedicate portions of the spectrum for assistive listening devices and wayfinding via Global Positioning Systems (GPS).

Accessibility in Paperwork Elimination Efforts

The Government Paperwork Elimination Act (GPEA) requires Federal agencies to develop electronic signatures and authentication methods for services and programs to eliminate the requirement that applica-

tions and transactions be completed on paper. Electronic services created as part of an agency's paper-work reduction efforts must be fully accessible to people with disabilities in order to comply with the Rehabilitation Act. The Subcommittee thus recommends that Federal agencies follow the implementation of this Act to ensure that accessibility remains a primary consideration in replacing paper-based systems with electronic ones.

Coordination with 21st Century Workforce Commission

The Subcommittee will contact and work with the new 21st Century Workforce Commission, which is charged with examining how to prepare the American workforce for the 21st century in terms of education, training, diversity, work-readiness, and other related issues. Specifically, the Subcommittee hopes to assist the Workforce Commission with its mandate to "examine the skills necessary to enter the information technology workforce" since this mandate directly relates to the Subcommittee's goals of ensuring accessibility in any technology-based training, and promoting skills in technology access evaluation and assistive technology integration.

Recommendations for Further Review and Action

1. The Subcommittee recommends that the President and Congress provide substantial and ongoing Federal financial support for Section 508 implementation, agency self-evaluation guidance and the associated collection and manipulation of data, technical assistance and training, and establishment of assistive technology programs within Federal agencies.
2. The Subcommittee recommends that the President issue an Executive Order to promote technology access in Federal agencies, and to suggest specific strategies that will help agencies comply with Section 508 of the Rehabilitation Act. The Executive Order should include an appropriate definition of "acquisition" and should use the definition of "electronic and information technology" specified in the Section 508 standards. It also should provide for adequate funding for the tech-

nical assistance functions in the Access Board, GSA, and other experienced Federal agencies to provide Section 508 guidance to all of other agencies, and fund the Department of Justice for technical assistance with respect to the periodic self-evaluations required by Section 508. Incorporating many of the recommendations described *infra* as well as the requirements under existing laws, the Executive Order also should direct agencies to do the following:

- Establish assistive technology programs and support functions;
 - Ensure that procurement/contracting training and programs include information on the technology access requirements and the new Section 508 standards in the Federal Acquisition Regulations;
 - Ensure that technology-based training and distance-learning programs are accessible to people with disabilities; and
 - Ensure that their web sites are compliant with Section 508, have the appropriate structure, and have all documents available in formats accessible to people with disabilities.
3. The Subcommittee recommends that the President's Management Council (and each of its subordinate organizations) establish a standing committee to develop strategies and procedures for ensuring that individuals with disabilities have access to, and use of, electronic and information technology, in compliance with Sections 501, 504, and 508 of the Rehabilitation Act. These organizations include the Chief Information Officers (CIOs), the Chief Financial Officers, and Senior Procurement Executives. In addition, the CIO Council should be directed to form a committee explicitly responsible for addressing information technology accessibility issues and Section 508 implementation, rather than subsuming these issues into other committees.
 4. The Subcommittee recommends that the President's Office of Science and Technology Policy include an Associate Director for Universal Design. This person can promulgate the message that accessibility is a key design factor for American science, technology, and industry in the 21st Century, and promote universal design principles in technology research and design.
 5. The Subcommittee recommends that the Federal government research the feasibility and potential effectiveness of having a standardized methodology for evaluating electronic and information technology systems commonly used by many agencies to determine whether they comply with the Access Board's Section 508 standards. This could include a centralized "testing laboratory" (Federal or private), self-certification by manufacturers, and a uniform evaluation form or a point system. Without such independent verification, Federal procurement officers and technology manufacturers and vendors will have no reliable means of evaluating which products or systems are accessible; this could substantially undermine Section 508's effectiveness by removing the competitive advantage it gives to accessible products.
 6. The Subcommittee recommends that research and development money be earmarked for development of cross-industry non-proprietary standards for features that could potentially increase the accessibility of electronic and information technology. For example, standardized infra-red signals or utility ports could lead to the increased use of wireless connections or personalized peripherals to connect to computers, kiosks, or other information appliances, thus making them more accessible to people with mobility impairments or other types of disabilities. This funding could flow through the National Institute on Disability and Rehabilitation Research in the U.S. Department of Education, the National Science Foundation, or other appropriate agencies.
 7. The Subcommittee recommends that the Telecommunications Act of 1996 be amended to:
 - Permit a private right of action on accessibility and usability requirements in Sections 255 and 251(a)(2);
 - Permit telecommunications relay services to access enhanced services such as voice mail and voice information menus;

- Expand current video description (audio description of visual elements of videos) requirements in Section 713 of the Telecommunications Act of 1996 to equal the current level required of closed captioning;
 - Recommend (or require) that network features, functions, and capabilities promote, include, or contain the capacity to operate enhanced services for persons with disabilities; and
 - Recommend that rules requiring audio description of videos be adopted.
8. The Subcommittee recommends that the Federal Relay Service (FRS), which provides telecommunications relay services for persons with hearing and speech impairments conducting Federal business, be required to institute a technical assistance program for Federal employees and customers. Furthermore, FRS should be strengthened so that Federal employees and customers are provided functionally equivalent access to telecommunication and information services and offered new relay technologies, such as video relay interpreting, speech-to-speech relay, speech-to-text relay, and voice and hearing carry-over.

Subcommittee on Department of Transportation Employment Policy Review

Mission and Goals of the Subcommittee

In furtherance of the Task Force's objective of erasing barriers to employment of individuals with disabilities, the Subcommittee has been charged with reviewing certain Department of Transportation (DOT) regulations which govern the employment of individuals operating trucks and buses in interstate commercial road transportation. We have reviewed aspects of DOT regulations which historically have been barriers to the employment of individuals with specified disabilities and have operated in a manner inconsistent with the principles enunciated in Federal law governing the rights of individuals with disabilities in employment, notably Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Title I of the ADA, 42 U.S.C. § 12111 *et seq.*³ However, these DOT regulations have been enacted pursuant to other statutes. DOT is engaged in an ongoing process of reconsidering and revising these regulations to permit the broadest possible licensing opportunities consistent with safety. The Subcommittee's work contributes to that effort.

Both Section 504 and the ADA standards generally prohibit the establishment of job qualifications that serve to exclude automatically from employment or consideration for employment an individual with a disability on the basis of a disability, without the employer first conducting an individualized

³Section 504 bars, among other things, discrimination in employment against otherwise qualified individuals with disabilities with respect to programs and activities that receive Federal financial assistance as well as the executive branch of the Federal government.

Approximately sixteen years after the Rehabilitation Act of 1973 was enacted, Congress, concerned that this Act alone was inadequate to eradicate discrimination against individuals with disabilities, signed into law the ADA, which applies Section 504's anti-discrimination principles to a protected class of individuals and subject entities broader than those relating only to programs and activities involving the Federal government. The ADA prohibits, among other things, employment discrimination against qualified individuals with disabilities by State and local government employers and private sector employers. Section 504 has been amended so that its standards with respect to employment discrimination are consistent with those included in Title I of the ADA. 29 U.S.C. § 794(d).

assessment of that disability and its relationship to his or her ability to perform the essential functions of the job. In particular, we have reviewed DOT's interstate commercial motor carrier driver qualifications that have served as automatic or absolute barriers to the employment of individuals with specific disabilities, with the goal of modifying them to be more responsive to an individual's actual ability to perform the job while fostering the Federal government's mandate to ensure the safety of the nation's roadways.

The Federal Highway Administration (FHWA), which is part of DOT, oversees the nation's interstate commercial motor carrier industry. The FHWA enforces DOT regulations that include those establishing minimum physical qualifications for individuals employed as interstate commercial motor carrier drivers. These physical qualifications are found in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 C.F.R. § 391.41. The FMCSRs include some qualifications which the FHWA has interpreted to require some manner of individualized assessment, such as standards relating to the impairment of certain limbs, respiratory impairments, certain forms of heart disease, high blood pressure, neuromuscular disease, and psychiatric disorders. However, the qualifications also include the following areas of medical fitness that the FHWA traditionally has treated as absolute barriers to the employment of individuals with certain disabilities in accordance with FMCSR requirements, regardless of what would be revealed as the result of an individualized assessment: missing limbs, epilepsy, vision, diabetes requiring the use of insulin for treatment, and hearing.

One of the more problematic barriers to interstate motor carrier driver employment has been the FMCSR's prohibition of the employment of any individual who has diabetes requiring the use of insulin for treatment. This standard has been of particular concern because of its incongruence with the otherwise existing principle of individualized assessment and the existence of current and developing evidence that many individuals who use insulin to control their diabetes safely can perform their jobs when employed in these and similar positions. In this regard, in 1998 Congress directed DOT to review the diabetes standard. Specifically,

Section 4018 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, directs DOT to pursue the implementation of a program to allow individuals who have diabetes and use insulin for treatment to operate commercial motor vehicles in interstate commerce under appropriate circumstances. A revision of the diabetes standard could help ensure that this Federally-conducted program is operated in a manner that provides maximum access to employment for people with disabilities, while still ensuring the safety of the nation's highways.

In light of Congress' directive, the Subcommittee has focused its attention on the FMCSR's prohibition against the employment of any individual who has diabetes requiring the use of insulin for treatment. In short, our goal is to support efforts under TEA-21 to move toward individualized assessments while ensuring a level of safety required by the pertinent provisions of TEA-21. Furthermore, we submit that an evaluation of the diabetes standard and its appropriate modification may serve as the model for addressing other standards found in the FMCSRs that, in their current form, also appear to be inconsistent with Federal disability law principles (*see infra*). To be sure, the Subcommittee is aware of the recent Supreme Court rulings regarding ADA coverage of individuals with impairments who use mitigating measures such as medicine or corrective lenses. Understanding that these decisions may have implications for our work, the Subcommittee is studying those cases to carefully assess their impact.

Description of Specific Project

Application of the ADA to the FMCSR's Diabetes Standard

Title I of the ADA prohibits employment "discrimina[tion] against a qualified individual with a disability because of the disability of such individual." 42 U.S.C. § 12112(a). An employer who imposes a qualification standard for a job that screens out "an individual with a disability or a class of individuals with disabilities" violates the ADA, unless the employer can show that the standard is "job related to the position in question and is consistent with business necessity." 42 U.S.C. § 12112(b)(6).

In interpretive guidance accompanying ADA regulations implementing Title I of the ADA, EEOC explained that, “[w]ith regard to safety requirements that screen out...an individual with a disability or a class of individuals with disabilities, an employer must demonstrate that the safety requirement, as applied to the individual, satisfies the ‘direct threat’ standard in order to show that the requirement is job-related and consistent with business necessity.” 29 C.F.R. Pt. 1630, App. § 1630.15(c). The ADA’s “direct threat” standard permits an employer to disqualify an individual with a disability for safety reasons only if he or she poses a “significant risk of substantial harm” that cannot be reduced or significantly eliminated by reasonable accommodation. 29 C.F.R. § 1630.2(r). When an employer assesses whether an individual poses a “direct threat,” it must conduct an individualized assessment of that individual’s ability safely to perform the essential functions of the position, including consideration of the most recent medical documentation or best available objective evidence about the specific safety risks that individual poses when performing his or her job. Among other things, the factors considered in a direct threat assessment should include, at a minimum: “[t]he duration of the risk,” “[t]he nature and severity of the potential harm,” “[t]he likelihood that the potential harm will occur,” and “[t]he imminence of the potential harm.”

A blanket exclusion of an entire class of individuals based upon generalized safety concerns commonly linked to a particular medical diagnosis, such as the FMCSR’s current prohibition of any individual with a diagnosis of insulin-dependent diabetes from driving a commercial motor vehicle in interstate commerce, generally does not meet the rigorous requirements of the ADA’s “direct threat” standard.

DOT’s Standard Governing Individuals with Insulin-Treated Diabetes

Overview

The detailed physical qualification regulations for drivers in interstate commerce are found in the FMCSRs at 49 C.F.R. § 391.41, and specific instructions to medical examiners for performing physical examinations of these drivers are found at 49 C.F.R. § 391.43. The FMCSRs generally provide that an

individual shall not operate a motor vehicle unless physically qualified as evidenced by a certificate of a medical examiner. The examiner must be knowledgeable about the driver’s job functions and whether his or her particular condition would interfere with the driver’s ability safely to operate a commercial motor vehicle.

As noted above, the FMCSRs as enforced by the FHWA include physical qualification requirements which rely on the discretion of a medical examiner to consider the condition of each individual. These standards relate to respiratory impairments, cardiovascular conditions, high blood pressure, neuromuscular disease, and psychiatric disorders. However, in the case of limb impairments, epilepsy, vision, insulin-treated diabetes, and hearing, the current standards are absolutely disqualifying, providing no discretion to the medical examiner.

Although the FMCSRs impose physical qualification requirements for safety reasons, the FHWA has an ongoing process in place for reviewing driver physical qualification requirements under the FMCSRs. For example, in 1986, Congress granted DOT the right to grant waivers to any of the physical qualifications for drivers included in the FMCSRs, “if the Secretary determines that it is in the public interest to grant the waiver and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.” 49 U.S.C. § 31315(a). In response to this legislation, the FHWA has considered and granted waivers to eligible individuals with respect to certain FMCSR requirements.

Congress’ enactment of TEA-21 in 1998 has clarified and expanded the FHWA’s authority to issue waivers from each of the standards set forth in the FMCSRs, providing that the agency publish procedures for applicants to follow to apply for waivers. That Act provides that an individual seeking a waiver or exemption from the FMCSR’s physical qualification standards must provide a written request identifying the reason for the waiver, the time period during which it is needed and its safety impact. Specifically, the applicant must explain how he or she would ensure a level of safety that is equivalent to, or greater than, the level of safety that would be

obtained by complying with the regulation. Any waiver obtained constitutes temporary regulatory relief for up to two years, subject to renewal, and during the time period of a waiver, no state may enforce any law that is inconsistent with the waiver.

The Standard

The FMCSR physical qualification standard which is the focus of the efforts of the Subcommittee prohibits drivers with insulin-dependent diabetes from operating commercial vehicles in interstate commerce. The current standard provides that driver applicants have: "...no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." 49 C.F.R. § 391.41(b)(5).

TEA-21

Section 4018 of TEA-21 requires DOT to determine if it is practical and cost-effective to create and maintain a permanent program that allows individuals with insulin-treated diabetes to operate commercial motor vehicles in interstate commerce. The Act states that this determination should focus on the development of a protocol for screening, managing and monitoring individual drivers' safety records. In the event that a determination is made that such a protocol is feasible, the FHWA is required to report a description of it to Congress and to initiate rulemaking to implement it. At the present, the FHWA has contracted with a private entity to plan the conduct of the work. The contractor currently is: (1) compiling and evaluating research and other relevant information on the effects of insulin-treated diabetes on commercial driving performance; (2) consulting with states that have developed and are implementing a screening program for intrastate commercial drivers with insulin-dependent diabetes; (3) evaluating departmental policy and actions that permit individuals with insulin-dependent diabetes in other modes of transportation; and (4) analyzing data describing the safety performance of commercial vehicles drivers with insulin-dependent diabetes.

Moreover, in furtherance of FHWA's obligations under TEA-21 to pursue a potential new diabetes standard, FHWA has been consulting with a panel of medical experts who currently are reviewing all

aspects of diabetes (regulations, guidelines, research, etc.) with the ultimate goal of providing medically-based recommendations for possibly amending the current standard while promoting highway safety. In general, the panel is reviewing current technology and research relative to diabetes and its treatment, risks associated with allowing drivers with insulin-treated diabetes to operate commercial vehicles, functional abilities of commercial drivers, and the bases for making individualized determinations of driver fitness.

In January 1999, the FHWA conducted an initial meeting with the private contractor to organize the selection of experts for the medical panel and to coordinate a time frame for completion of the panel's work. As a result, on September 1, 1999, a meeting of the panel was convened to review the panel's recommendations and to agree on conclusions. A final written report is scheduled to be completed by December 1999.

Lastly, in 1996 a retrospective comparative case study had been initiated by the FHWA as part of an internal review of the level of risks associated with the operation of commercial motor vehicles by insulin-using drivers. A final report, under review by the expert panel, will assess the implications of insulin-using drivers operating commercial vehicles in interstate commerce. The report may provide an additional basis for revising the diabetes standard.

Recommendations for Further Review and Action

As explained, Section 4018 of TEA-21 directs the FHWA to consult experts to review thoroughly all relevant aspects of diabetes and to make appropriate medically-based recommendations. These actions may provide the basis for amending the current diabetes standard to allow individuals with insulin-treated diabetes safely to operate trucks in interstate commerce. To that end, as previously discussed, in January 1999 the FHWA began a process to select a panel of medical experts, and the panel's presentation of its findings is anticipated to occur in August 1999. Presently, this panel is formulating recommendations based on current technology and research relative to diabetes and its treatment, risks

associated with allowing individuals with insulin-treated diabetes to operate trucks in interstate commerce, and functional abilities of drivers. The panel also is considering the basis for making individualized assessments of driver fitness.

In light of the relevance of the tasks currently being performed by the medical panel to the mission of the Subcommittee, we believe it is prudent to review and consider the panel's findings and conclusions prior to making our final recommendations concerning modification of the FMCSR's diabetes standard in light of Federal disability law. Accordingly, we are awaiting the results of the panel's review prior to issuing a final recommendation.

Subcommittee on Disability Benefits and the ADA

Mission and Goals of the Subcommittee

The Subcommittee on Disability Benefits and the ADA was organized to determine what measures ought to be undertaken to ensure that individuals who applied for and/or received disability benefits from the Social Security Administration (SSA) would not be precluded from bringing legitimate employment discrimination claims under Title I of the ADA. The Subcommittee thus continued the work initiated by the "Work Group on the Estoppel Issue," established by the Task Force in May 1998. That work group's report and recommendations to the Task Force are summarized in *Re-charting the Course: First Report of the Presidential Task Force on the Employment of Adults with Disabilities*.

Re-Charting the Course describes the problems encountered by individuals who applied for and/or received disability benefits when trying to assert legitimate employment discrimination claims under the ADA. Many courts tended to view an ADA plaintiff's statement in an application for benefits that he or she was disabled and unable to work as inconsis-

tent with an assertion that the plaintiff was a "qualified individual with a disability" under the ADA. Due in part to efforts undertaken by EEOC, SSA, and DOJ, a significant number of Federal Circuit Courts had, over the course of the past two years, determined that representations in applications for disability benefits did not automatically estop individuals from bringing suits alleging employment discrimination under the ADA. Nevertheless, some courts, particularly the Fifth and Eighth Circuits, still imposed significant evidentiary burdens on ADA plaintiffs who applied for and/or received disability benefits.

In July 1998, the Solicitor General filed an *amicus curiae* brief asking that the Supreme Court grant *certiorari* in *Cleveland v. Policy Management Systems Corp.*, in which the Fifth Circuit had concluded that in a case brought under Title I of the ADA involving a plaintiff who applied for disability benefits from the SSA, a rebuttable presumption exists that the plaintiff is not a qualified individual with a disability. The Supreme Court granted *certiorari*, and in February 1999, the Solicitor General filed a second *amicus curiae* brief arguing that although representations in applications for benefits are relevant in determining whether an individual is "qualified" within the meaning of the ADA, an employer should not be entitled to any special presumption.

On May 24, 1999, the Supreme Court issued a unanimous decision in *Cleveland*, holding that an ADA plaintiff who makes representations in an application for Social Security Disability Insurance (SSDI) is not estopped from bringing an ADA claim, and that an employer in such a case is not entitled to any special presumption. See *Cleveland v. Policy Management Systems Corp.*, 119 S. Ct. 1597 (1999). In reaching its conclusion, the Court emphasized the different purposes underlying the ADA and the Social Security Act and the different ways in which each law defines "disability" (See at 1600-03). The Court emphasized, however, that an individual who claimed to be disabled and unable to work in an application for SSDI benefits would have to proffer a sufficient explanation of how this position could be reconciled with a position taken in an ADA lawsuit that he or she is a "qualified individual with a disability" who is capable of performing work for a particular employer. The Court suggested several possible

explanations. For example, an individual might be able to show that he or she meets the criteria for receipt of SSDI benefits, which do not include consideration of whether a reasonable accommodation would enable an applicant to work, and at the same time could be “qualified” within the meaning of the ADA to perform a particular job with a reasonable accommodation. An ADA plaintiff might also be able to show that despite a current inability to work, he or she was “qualified” at the time of the alleged employment discrimination. Yet another explanation might be that an ADA plaintiff, while able to work for a particular employer, has a condition that is presumptively disabling for purposes of receiving SSDI benefits.

The decision in *Cleveland* would appear to reduce significantly the possibility that meritorious ADA cases filed by people who have applied for and/or received SSDI benefits will be dismissed. The Subcommittee, however, believes that additional measures, some of which have already been accomplished, will further ensure that the ADA rights of disability benefits recipients are protected.

Specific Projects and Recommendations

Short-Term (Less than 18 Months)

Revisions to Forms Regarding Claims for Disability Benefits

The SSA already has revised several forms on which applicants for benefits are required to provide information about their disability and inability to work. The changes include a plain English explanation of the SSA’s definition of “disability.”

The revised forms also make it easier for benefits applicants to explain their inability to work in a way that may prove important to individuals who are also asserting rights under Title I. For example, an applicant could qualify a Statement about inability to work by explaining that he or she could work with a reasonable accommodation. The forms that have been revised include the following:

- SSA-3367: This is the report that the SSA interviewer fills out regarding the interview with the claimant.
- SSA-3368BK: This is the form that the claimant fills out (or that is filled out for him/her) describing his/her “illness, injury or condition” and how the “illness, injury or condition” limits his/her ability to work.
- SSA-3369: This is the form that the claimant fills out (or which is filled out for him/her) in which he/she gives his/her work history (jobs held and dates worked for the past 15 years) and describes what he/she did on the job, the kinds of physical activity he/she engaged in on the job, and what types of responsibilities he/she had over others.

The SSA will continue to make similar changes to other forms, including the application forms for SSDI and Supplemental Security Income (SSI), by January 2000.

Publication of Social Security Rulings

In addition to publishing the *Cleveland* decision as a Social Security ruling, the Subcommittee recommends that SSA issue, by the end of 1999, guidance that will further clarify the differences between SSA’s definition of “disability” and the ADA’s definition. Specifically, the guidance should emphasize the fact that SSA does not consider “reasonable accommodation” when determining eligibility for benefits.

Instructions to EEOC Investigators

EEOC issued instructions to its investigators on July 27, 1999, on how to gather and effectively evaluate evidence in connection with ADA charges that raise issues affected by the decisions in four ADA cases recently decided by the United States Supreme Court, including *Cleveland*.

Outreach

EEOC has already engaged in significant outreach concerning the holding and implications of the *Cleveland* decision. Commission staff have given presentations on the case to groups that have included individuals with disabilities, employers, and

attorneys representing both plaintiffs and defendants in ADA cases. The Subcommittee recommends continued, significant outreach, particularly throughout the course of the next year. Additionally, the Subcommittee will continue to examine other available means of informing the public and the judiciary about the decision in *Cleveland*.

Long-Term (More than 18 Months)

SSA will revise a brochure explaining its benefits program to clarify that SSA's definition of "disability" differs from other definitions of the same term.

Recommendations for Further Review and Action

The Subcommittee recommends that SSA change its system for producing computer-generated claims applications to ensure that individuals who apply for and/or receive benefits can still assert valid claims under Title I of the ADA.

Members of the Committee on Civil Rights

Chair:

Ida L. Castro, Chairwoman
Equal Employment Opportunities Commission

Agency Members:

Commission on Civil Rights

Department of Defense

Department of Education

Department of Health and Human Services

Department of Housing and Urban Development

Department of Justice

Department of Labor

Department of Transportation

Equal Employment Opportunity Commission

Federal Communications Commission

National Council on Disability

President's Committee on Employment of People with Disabilities

Social Security Administration

Attachment A:

Facts on Racial and Ethnic Minorities with Disabilities

- Racial and ethnic minorities on average have a higher prevalence of disability than the general U.S. population.⁴
- Racial and ethnic minorities with disabilities also on average face higher poverty rates and lower levels of educational attainment than the general U.S. population.
- As compared with an overall U.S. disability rate of 19.4 percent, Native Americans have a disability rate of 21.9 percent (26.9 percent for adolescents and working-age adults, age 15-65); African Americans have a disability rate of 20.0 percent
- African Americans have the highest rate of severe disability at 12.2 percent, as compared with 9.8 percent for Native Americans, and 9.6 percent for the general U.S. population.
- Although Federal surveys have found that Hispanics, Asians, and Pacific Islanders have lower rates of disability than the general population (15.3 percent for Hispanics, and 9.9 percent for Asians and Pacific Islanders), the validity of these results have been challenged by some researchers who argue that survey design and cultural attitudes about disability may result in undercounting for these populations.⁵
- Studies show that there are several reasons for the higher rate of disability among some racial and ethnic minorities. They include:
 1. Racial and ethnic minorities are statistically more likely to have a lower income, and people with lower incomes are more likely to have disabilities;
 2. Racial and ethnic minorities are statistically more likely to hold physically demanding and higher risk jobs which make them more vulnerable to higher disability rates; and
 3. Racial and ethnic minorities are statistically less likely to have health insurance.
- While the labor force participation rate for people 18 to 64 years old who do not have disabilities is nearly 83 percent, it is only about 52 percent for those with disabilities. The labor force participation rate for whites with disabilities is 54.9 percent and only about 38.6 percent for non-whites with disabilities. For people with severe disabilities, the labor force participation rate is about 30 percent for whites,
- 21.2 percent among Hispanics, and 17.8 percent among African Americans.⁶
- Lack of fluency in English can result in limited or no real access to services available to people with disabilities, including such things as healthcare, emergency services, educational services, rehabilitation services, transportation, housing, long-term services and supports, assistive technology devices and services, financial services, legal services, and employment and training services.

⁴Much of the information contained in these “talking points” was derived from Statistical Abstract Number 10, January 1996, published by the U.S. Department of Education, National Institute on Disability and Rehabilitation Research. The data were collected in 1991 and 1992 in the Census Bureau’s Survey of Income and Program Participation (SIPP), an ongoing, population-based panel survey of the economic status of the non-institutionalized, civilian population living in the U.S. Many of the employment statistics are from an April 25, 1996 report from Jack McNeil of the Census Bureau. More detailed information on persons with disabilities can be found on the U.S. Census Bureau’s disability web site: www.census.gov/hhes/www/disable.html.

⁵See, e.g., Paul Leung, “Asian Pacific Americans and Section 21 of the Rehabilitation Act Amendments of 1992,” *American Rehabilitation*, Vol. 22, No. 1 (Spring 1996).

⁶Sebesta, Trupin and Yelin, “Racial and Gender Disparity in Labor Force Participation Among Persons with Disabilities,” 1990-1994.

- Racial and ethnic minorities with disabilities often are the victims of “double discrimination” in the workplace. These individuals may be discriminated against for two reasons: (1) because of their race or ethnic status; and (2) because of their disability. The merger of minority status and disability thus results in situations where victims of discrimination may not even know whether the unfair treatment resulted from their minority status or their disability.

For more information about racial and ethnic minorities with disabilities, please contact the Presidential Task Force on Employment of Adults with Disabilities, 200 Constitution Avenue, N.W., Room S-2220, Washington, D.C. 20210, (202) 219-6081, TTY (202) 219-0012, FAX (202) 219-6523.